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6 UNITED STATES DISTRICT COURT
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8 CENTRAL DISTRICT OF CALIFORNIA

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10 SIMON KARIMIAN,) CV 12-08359-SVW(CWx)
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12 Plaintiff,) ORDER DENYING PLAINTIFF'S
13) MOTION FOR ENTRY OF DEFAULT
14 v.) JUDGMENT AGAINST DEFENDANT
15) COLLECTION CONNECTION [53]
16 CMRE FINANCIAL SERVICES INC., et)
17 al)
18)
19 Defendants.)
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30 **I. INTRODUCTION**

31 On September 27, 2012, Plaintiff Simon Karimian ("Plaintiff")
32 filed a Complaint against Defendant Collection Connection ("Defendant")
33 for violating the (1) Federal Fair Credit Reporting Act ("FCRA"); (2)
34 Federal Fair Debt Collection Practices Act ("FDCPA"); (3) California
35 Consumer Credit Reporting Agencies Act ("CRAA"); (4) Rosenthal Fair
36 Debt Collection Practices Act ("RFDCPA"); and (5) defamation by libel.
37 Specifically, Plaintiff alleges that Defendant breached its duty to
38 employ reasonable procedures to ensure the accuracy of credit
39 information under both the FCRA, 15 U.S.C. § 1681s-2(b) and the CRAA,
40 Cal Civ. Code § 1785.25(a), by attributing an inaccurate account to
41 Plaintiff and by failing to comply with its re-investigative duties.
42 Plaintiff further alleges that Defendant committed violations under the
43 FDCPA, 15 U.S.C. §§ 1692(e)-(g) and the RFDCPA, Cal. Civ. Code

1 § 1788.17 because Defendant failed to comply with statutory notice,
2 disclosure, and validation requirements, reported debt information
3 Defendant knew or should have known to be false, and failed to stop
4 collection efforts upon notice of Plaintiff's dispute. As a result,
5 Defendant allegedly damaged Plaintiff's creditworthiness and reputation
6 as a consumer and borrower.

7 On April 23, 2013, Plaintiff filed a Request for Entry of Default
8 against Defendant, and the Clerk entered Defendant's default on April
9 24, 2013. On June 4, 2013, Plaintiff filed a Motion for Default
10 Judgment ("Motion"). (Dkt. 53). For the reasons set forth below, the
11 Motion is DENIED without prejudice.

12 **II. FACTS & PROCEDURAL HISTORY**

13 On or about August 2012, Plaintiff obtained his credit reports
14 maintained by three major credit reporting agencies: Experian, Equifax,
15 and TransUnion (collectively "CRAs"). (Compl. ¶ 11). Plaintiff
16 examined his credit reports and discovered an account reported by
17 Defendant in derogatory status (Account No. TCCPIDS7005031456). (Id.).
18 Upon further review, Plaintiff determined that the account did not
19 belong to him and, consequently, on August 3, 2012, submitted written
20 credit disputes to the CRAs. (Compl. ¶¶ 12, 13).

21 Based on information and belief, the CRAs contacted Defendant
22 regarding Plaintiff's disputed account. (Compl. ¶ 14). On August 20,
23 2012, Plaintiff mailed a dispute letter to Defendant requesting
24 documentation to substantiate the account, validation of the purported
25 debts, and verification of their collection accounts as reported to the
26 CRAs. (Id. ¶ 16). Defendant did not respond.

27 Several days following Plaintiff's credit bureau dispute, updated
28 credit reports showed that Defendant allegedly verified the accounts to

1 the CRAs. (Compl. ¶ 19). On September 20, 2012, and again on
2 September 25, 2012, Plaintiff sent a letter to Defendant requesting
3 substantiation to support their verification of the account, but
4 Defendant did not respond to Plaintiff or otherwise delete the account.
5 (Id. ¶¶ 20-21).

6 Based on these allegations, Plaintiff raises seven causes of
7 action: (1) willful violation of the FCRA, 15 U.S.C. § 1681s-2(b);
8 (2) negligent violation of the FCRA, 15 U.S.C. § 1681s-2(b);
9 (3) intentional violation of the CCRAA, Cal. Civ. Code § 1785.25(a);
10 (4) negligent violation of the CCRAA, Cal. Civ. Code § 1785.25(a); (5)
11 violation of the FDCPA, 15 U.S.C. §§ 1692(e)-(g); (6) violation of the
12 RFDCPA, Cal. Civ. Code § 1788.17; and (7) defamation by libel. The
13 Complaint requests the following relief: (1) actual damages;
14 (2) statutory damages; (3) civil penalties; (4) legal fees and costs;
15 (5) prejudgment and postjudgment interest; (6) punitive damages; (7)
16 declaratory relief; (8) injunctive relief; and (9) additional relief as
17 the Court deems proper. (Compl. at 10).

18 **III. LEGAL STANDARD**

19 Before a court may rule on a Motion for Default Judgment, it first
20 must determine whether it complies with Rule 55 of the Federal Rules of
21 Civil Procedure and with Local Rule 55-1. See PepsiCo, Inc. v. Cal.
22 Sec. Cans, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). The Motion for
23 Default Judgment must set forth: (1) when and against which party the
24 default was entered; (2) the identification of the pleading to which
25 default was entered; (3) whether the defaulting party is an infant or
26 incompetent person, and if so, whether that person is adequately
27 represented; (4) that the Soldiers' and Sailors' Civil Relief Act of
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1 1940 does not apply; and (5) that notice of the application has been
2 served on the defaulting party, if required. Id.

3 Once these procedural requirements are met, "[g]ranteeing or denying
4 a motion for default judgment is a matter within the court's
5 discretion." Landstar Ranger, Inc. v. Parth Enters., 725 F. Supp. 2d
6 916, 919 (C.D. Cal. 2010). Default judgments are ordinarily
7 disfavored. Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986).
8 Accordingly, the Ninth Circuit has instructed courts to consider the
9 following factors in deciding whether to grant default judgment: (1)
10 the possibility of prejudice to the plaintiff; (2) the merits of the
11 plaintiff's substantive claim; (3) the sufficiency of the complaint;
12 (4) the sum of money at stake in the action; (5) the possibility of a
13 dispute concerning material facts; (6) whether the default was due to
14 excusable neglect; and (7) the strong policy underlying the Federal
15 Rules of Civil Procedure favoring decisions on the merits. Id. at
16 1471-72.

17 Upon entry of default, the well-pleaded allegations of the
18 complaint, except those concerning damages, are deemed true. Fed. R.
19 Civ. P. 8(b)(6); see also TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d
20 915, 917-18 (9th Cir. 1987) (citation omitted). The court, however,
21 must assure itself that "the unchallenged facts constitute a legitimate
22 cause of action, since a party in default does not admit mere
23 conclusions of law." Landstar, 725 F. Supp. 2d at 920. Further, the
24 plaintiff must provide evidence of damages, and the damages sought must
25 not be different in kind from or exceed the amount demanded in the
26 pleadings. Fed. R. Civ. P. 54(c).

1 **IV. DISCUSSION**

2 **A. Procedural Requirements**

3 Plaintiff has satisfied in substance the procedural requirements
 4 for default judgment under Local Rule 55-1. Plaintiff's Motion posits
 5 that (1) Defendant was served with the Summons and the Complaint, and
 6 on April 24, 2013, the Clerk entered default against Defendant (Doc.
 7 No. 26, 32); (2) Defendant failed to respond to the Complaint; (3)
 8 Defendant is not an infant or an incompetent person, but a California
 9 corporation; (4) Defendant is not in military service or otherwise
 10 subject to the Soldiers' and Sailors' Civil Relief Act; and (5)
 11 Defendant has not appeared in this action to date. (Mot. at 7)¹. As
 12 the procedural requirements are met, the Court turns to examine the
 13 merits of the request.

14 **B. Application of Eitel Factors**

15 **1. Possibility of Prejudice to the Plaintiff**

16 A denial of default judgment that leaves a plaintiff without other
 17 recourse for recovery is prejudicial. PepsiCo, 238 F. Supp. 2d at
 18 1177. Denying default judgment would leave Plaintiff without other
 19 means to recover his loss. Moreover, prejudice arises from unnecessary
 20 delay in receiving the relief requested and from the resulting need to
 21 devote additional time and money to further litigation. Plaintiff will
 22 also be unable to obtain injunctive relief as Defendant will continue
 23 to report inaccurate credit information and damage Plaintiff's
 24 creditworthiness. Consequently, without a default judgment, Plaintiff

26 ¹Although Plaintiff must normally outline the procedural requirements
 27 for default judgment in a Declaration, nevertheless, because the
 28 instant Motion for Default Judgment is denied, proper citation to a
 Declaration is dispositive.

1 will suffer prejudice. Therefore, the first Eitel factor weighs in
2 favor of granting default judgment.

3 **2. Substantive Merits and Sufficiency of Complaint**

4 The second and third Eitel factors are often analyzed together.
5 The Ninth Circuit has "suggested that these two factors require that a
6 plaintiff 'state a claim on which [it] may recover.'" PepsiCo, 238 F.
7 Supp. 2d at 1175 (quoting Kloepping v. Fireman's Fund, No. C 94-2684
8 THE, 1996 U.S. Dist. LEXIS 1789, at *2 (N.D. Cal. Feb. 13, 1996)).

9 Upon entry of default, all well-pleaded facts in the complaint are
10 taken as true, except those relating to damages. TeleVideo Sys., Inc.,
11 826 F.2d at 917-18. Additionally, courts recognize that these factors
12 favor the plaintiff where the defendant, like Defendant here, has never
13 disputed the merits of the claim. See PepsiCo, 238 F. Supp. 2d at
14 1177. For the reasons stated below, Plaintiff has failed to "state a
15 claim on which [Plaintiff] may recover." Id. at 1175.

16 **a. Violations of FCRA**

17 Plaintiff alleges that Defendant violated 15 U.S.C. § 1681s-2(b)
18 in three respects: (1) by negligently breaching their duty to report
19 accurate credit information; (2) by failing to conduct a proper
20 investigation of disputed information and by failing to verify,
21 correct, or delete Plaintiff's disputed information within the thirty
22 day time frame in violation of § 1681s-2(b)(1)-(2); and (3) by
23 willfully disregarding their "re-investigative duties" in the event of
24 consumer disputes in violation of § 1681s-2(b). (Compl. ¶¶ 25-36).

25 **i. Legal Standard**

26 "[T]o ensure that credit reports are accurate, the FCRA imposes
27 some duties on the sources that provide credit information to [credit
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1 reporting agencies], called 'furnishers' in the statute." Gorman v.
2 Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir. 2009). Section
3 1681s-2 sets forth two categories of responsibilities that furnishers
4 must adhere to. Subsection (a) establishes the duty "to provide
5 accurate information," which includes a duty not to report information
6 that a furnisher knows or "has reasonable cause to believe" is
7 inaccurate, a duty to correct and update information provided to
8 consumer reporting agencies, and a duty to notify such agencies when a
9 consumer disputes any reported information. See 15 U.S.C. § 1681s-
10 2(a).

11 Section 1681s-2(b) imposes obligations that are "triggered 'upon
12 notice of dispute'— that is, when a person who furnished information to
13 a CRA receives notice from the CRA that the consumer disputes the
14 information." Gorman, 584 F.3d at 1154. Specifically, after receiving
15 a notice of dispute, the furnisher has four obligations: (1) to conduct
16 an "investigation with respect to the disputed information;" (2) to
17 review all relevant information provided by the CRA; (3) to report the
18 results of its investigation to the CRA; (4) and if the investigation
19 finds the information is incomplete or inaccurate to report those
20 results "to all [nationwide] consumer reporting agencies to which the
21 person furnished the information." 15 U.S.C. § 1681s-2(b)(1).

22 However, notice of a dispute received directly from the consumer does
23 not trigger a furnisher's duties under subsection (b). See Gorman, 584
24 F.3d at 1154. Further, the Ninth Circuit has clarified that this
25 investigation by the furnisher must be "reasonable" and "non-cursory."
26 Id. at 1157.

1 Although "the FCRA expressly creates a private right of action for
2 willful or negligent noncompliance with its requirements . . . §
3 1681s-2 limits this private right of action to claims arising under
4 subsection (b), the duties triggered upon notice of a dispute from a
5 CRA." Gorman, 584 F.3d at 1154; see also § 1681s-2(c) ("Except [for
6 circumstances not relevant here], sections 1681n and 1681o of this
7 title do not apply to any violation of . . . subsection (a) of this
8 section, including any regulations issued thereunder."). Thus,
9 "[d]uties imposed on furnishers under subsection (a) are enforceable
10 only by federal or state agencies." Gorman, 584 F.3d at 1154.

11 **ii. Application**

12 First, Plaintiff's claim that Defendant negligently reported
13 inaccurate information about Plaintiff to the CRAs is not cognizable
14 because the duty to furnish accurate credit information is set forth in
15 15 U.S.C. § 1681s-2(a)(1)(A), not in § 1681s-2(b). There is no private
16 right of action for a claim brought under subsection (a). Gorman, 584
17 F.3d at 1154. Accordingly, this claim fails.

18 Second, Plaintiff's claim that Defendant failed to conduct a
19 proper investigation of Plaintiff's disputed information cannot be
20 sustained because the Complaint itself alleges that Defendant
21 investigated and verified the debt to the CRAs. By Plaintiff's own
22 admission, several days after the CRAs contacted Defendant regarding
23 Plaintiff's disputed account, updated credit reports showed that
24 Defendant had verified the account to the CRAs. (Compl. ¶¶ 14, 19).
25 In other words, Defendant investigated, reviewed, and verified the
26 disputed information and reported its results - i.e., verification - to
27 the CRA. The Complaint contains no factual allegations suggesting that
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1 Defendant's investigation was deficient or unreasonable.² Because the
2 Complaint itself suggests that Defendant's investigation did not reveal
3 inaccurate information, the duty to correct or delete the disputed
4 information did not arise.

5 Rather, Plaintiff's Complaint focuses on the allegation that
6 Defendant had a duty to respond to *Plaintiff's* repeated letters.
7 (Compl. ¶ 22). Section 1681s-2(b), however, requires no such action
8 from Defendant. Accordingly, the allegations in the Complaint are
9 insufficient to warrant default judgment on the FCRA claims brought
10 under 15 U.S.C. § 1681s-2(b).

11 **b. Violations of FDCPA**

12 Plaintiff next alleges that Defendant failed to serve him with a
13 written notice of the subject debt collection in violation of 15 U.S.C.
14 § 1692g(a), and failed to cease collection activities in the absence of
15 validation of the debt in violation of § 1692g(b). Plaintiff further
16 alleges that because Defendant reported the subject debt to CRAs
17 without notice to Plaintiff and without verifying the debt, Defendant
18 used "false, deceptive, and misleading representations" to collect the
19 debt in violation of § 1692e(2), and used "unfair or unconscionable
20 means" to collect the debt in violation of § 1692f. (Compl. ¶¶ 45-52).

21 **i. Section 1692g(a)**

22 Section 1692g(a) provides that within five days after the "initial
23 communication" with a consumer concerning the collection of debt, a
24 debt collector "must send consumers written notice containing certain
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26 ² Plaintiff's conclusory assertion that the disputed account does not
27 belong to him, does not constitute well-pleaded facts to support a
28 plausible inference that Defendant failed to conduct a reasonable
investigation.

1 information regarding the alleged debt and advising them inter alia
2 that it will be assumed to be valid unless the consumer contests its
3 accuracy or validity within thirty days." Swanson v. S. Or. Credit
4 Serv., Inc., 869 F.2d 1222, 1224 (9th Cir. 1988). Section 1692g(a)
5 requires only that the notice is sent to the consumer, but does not
6 require the debt collector to establish the actual receipt by the
7 consumer. Mahon v. Credit Bureau of Placer County Inc., 171 F.3d 1197,
8 1201 (9th Cir. 1999).

9 Here, Plaintiff's Complaint did not assert that Defendant engaged
10 in any "initial communication" with Plaintiff that would trigger its
11 duties under § 1692g(a). Courts agree that a debt collector need not
12 provide any written notice to a consumer if the debt collector never in
13 fact had any initial communication with the consumer. See Grigoryan v.
14 Convergent Outsourcing, Inc., No. CV 12-1499-CAS, 2012 WL 4475455, at
15 *2 (C.D. Cal. Sept. 24, 2012) ("Because a defendant cannot violate the
16 plain terms of any of the above-cited code sections [§§ 1692e(11),
17 1692g(a), 1692e(1), and 1692f,] without making some sort of
18 communication with a consumer, plaintiff's claim fails as a matter of
19 law."); Nikogosian v. Cavalry Portfolio Servs., LLC, No. CV
20 12-00464-RGK (AJWx), 2012 WL 2568124, at *2 (C.D. Cal. July 2, 2012)
21 ("Some contact with Plaintiff by Defendant in the act of collecting a
22 debt is necessary to trigger a claim under any of the four provisions
23 of the FDCPA [, §§ 1692e(11), 1692g(a), 1692e(1), and 1692f,] that
24 Plaintiff cites in her Complaint. Without any supporting factual
25 allegations, Plaintiff's claim under the FDCPA fails."). Therefore,
26 because Defendant did not engage in an initial communication,
27 Defendant's duty to serve notice did not arise under § 1692g(a).

Plaintiff's potential argument that Defendant engaged in an "initial communication" by reporting the debt to the CRAs is also unavailing. This reading of "initial communication" is foreclosed by the plain statutory text, which states that the duty to serve notice is triggered upon "initial communication with a consumer in connection with the collection of any debt." 15 U.S.C. § 1692g(a) (emphasis added). Here, the CRAs are not consumers because they are not "obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a. Thus, Defendant's contact with CRAs does not constitute a communication with a consumer. See also Berberyan v. Asset Acceptance, LLC, No. CV 12-4417-CAS, 2013 WL 1136525, at *4 (C.D. Cal. Mar. 18, 2013) (rejecting same argument that furnisher's alleged reporting of a debt to CRAs constituted a "communication"). In sum, Plaintiff has failed to "state a claim on which [Plaintiff] may recover" under § 1692g(a). PepsiCo, 238 F. Supp. 2d at 1175.

ii. Section 1692g(b)

Plaintiff alleges that Defendant violated section 1692g(b) by failing to validate the debt, which he disputed in his letters, and by continuing to report the debt to CRAs. Under section 1692g(b), if a consumer disputes in writing the validity of the debt within 30 days of **receiving the notice required by § 1692g(a)**, the debt collector shall cease collection of the debt until the debt collector provides verification of the debt to the consumer. 15 U.S.C. § 1692g(b) (emphasis added); see also Mahon, 171 F.3d at 1202 ("Under this section, a debt collector must provide verification of the debt to the debtor, upon written request made by the debtor within 30 days after receipt of the initial Notice."). In other words, § 1692g(b) governs a

1 debt collector's duties after an initial communication between the debt
2 collector and consumer has taken place under § 1692g(a).

3 However, as already discussed above, the Complaint fails to allege
4 any "initial communication" from Defendant to Plaintiff. The result,
5 as explained below, is that section 1692g(b) never comes into effect:

6 Subsection 1692g(b), which establishes the temporary
7 moratorium on collection efforts, comes into effect
8 only [i]f the consumer notifies the debt collector in
9 writing within the thirty-day period described in
10 subsection (a) of this section that the debt . . . is
11 disputed In turn, that thirty day period
commences only after (1) an "initial communication"
from a debt collector, followed by (2) a written
notice to the debtor of his right to challenge the
debt. As noted above, if no initial communication
takes place, then the thirty day period never begins
running.

12 Lane v. Fein, Such and Crane, LLP, 767 F. Supp. 2d 382, 387 (E.D.N.Y.
13 2011). Thus, absent any initial communication, Defendant's duties
14 under § 1692g(b) never ripened. Accordingly, Defendant's failure to
15 validate Plaintiff's disputes and continued reporting of the debt are
16 not actionable under § 1692g(b). Therefore, Plaintiff has failed to
17 "state a claim on which [Plaintiff] may recover" under § 1692g(b).
18 PepsiCo, 238 F. Supp. 2d at 1175.

19 **iii. Sections 1692e and 1692f**

20 Section 1692e prohibits a debt collector from using "any false
21 representation or deceptive means to collect or attempt to collect any
22 debt or to obtain information concerning a consumer." 15 U.S.C.
23 § 1692e. This prohibition encompasses false representations concerning
24 the "character, amount, or legal status of any debt." 15 U.S.C.
25 § 1692e(2)(A). It also includes "[c]ommunicating or threatening to
26 communicate to any person credit information which is known or which
27 should be known to be false, including the failure to communicate that
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1 a disputed debt is disputed." 15 U.S.C. § 1692e(8). Section 1692f
2 provides that "[a] debt collector may not use unfair or unconscionable
3 means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

4 Here, Plaintiff has not alleged facts to suggest that Defendant's
5 act of reporting the subject debt to the CRAs was false, deceptive,
6 unfair, or unconscionable. In fact, the Complaint establishes that
7 once Defendant received Plaintiff's August 2012 letter disputing the
8 debt, Defendant immediately verified Plaintiff's accounts to the CRAs.
9 (Compl. ¶ 19). The Court therefore concludes Plaintiff has failed to
10 "state a claim on which [Plaintiff] may recover" as to the FDCPA claims
11 under sections 1692e and 1692f. PepsiCo, 238 F. Supp. 2d at 1175.

12 In sum, Plaintiff's federal claims clearly fail. The Court may
13 dismiss on its own motion a claim pursuant to Federal Rule of Civil
14 Procedure 12(b)(6). See Omar v. Sea-Land Serv., Inc., 813 F.2d 986,
15 991 (9th Cir. 1987) ("A trial court may dismiss a claim sua sponte
16 under [Rule] 12(b)(6). Such a dismissal may be made without notice
17 where the claimant cannot possibly win relief.") (internal citations
18 omitted). Accordingly, Plaintiff's federal claims are DISMISSED.
19 Because no federal claim remains, the Court declines to exercise
20 supplemental jurisdiction over the remaining state law claims. 28
21 U.S.C. § 1367(c)(3).

22 **V. CONCLUSION**

23 For the reasons set forth above, Plaintiff's Motion for Entry of
24 Default Judgment against Defendant Collection Connection is DENIED.
25 The claims against Defendant are DISMISSED, without prejudice to the
26 filing of an amended complaint. Plaintiff may file an amended
27 complaint against Defendant within twenty-one (21) days of the date of
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1 this Order. Failure to file an amended complaint by this deadline will
2 result in dismissal with prejudice as to Collection Connection.

3 Apart from Collection Connection, the only remaining defendant is
4 Fidelity Creditors Services, with whom Plaintiff has negotiated a
5 settlement. If Plaintiff does not file the appropriate voluntary
6 dismissal within fourteen (14) days of the date of this Order, the
7 Court will reset the matter for trial.

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9 IT IS SO ORDERED.

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12 DATED: July 31, 2013



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STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE